

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

EDDIE TYLKA,

Plaintiff

V.

STERLING JEWELERS, INC.,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

EDDIE TYLKA (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., allege the following against STERLING JEWELERS, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq* ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania, and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in Scottdale, Pennsylvania 15683.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a company with its principal place of business located at 375 Ghent Road , Akron, Ohio 44333.

8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153 (39).

9. At all relevant times, Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that he has had for more than one (1) year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Plaintiff never gave permission to Defendant to call his cellular telephone.

14. Plaintiff never furnished Defendant with his cell number and never

1 authorized Defendant to call him.

2 15. Nevertheless, beginning in late December 2014, and continuing
3 thereafter, Defendant called Plaintiff on his cellular telephone on a repetitive and
4 continuous basis.

5
6 16. When contacting Plaintiff on her cellular telephone, Defendant used
7 an automatic telephone dialing system and/or automatic and/or pre-recorded
8 messages.

9
10 17. Defendant's telephone calls were not made for "emergency
11 purposes."

12 18. Defendant's automated messages left on Plaintiff's voicemail
13 identified "Sterling Jewelers" as the caller, and instructed Plaintiff to call back at
14 the provided number.

15
16 19. In those instances when Plaintiff answered Defendant's calls, he was
17 unable to speak to a live person because its messages were automated.

18 20. Defendant's calls were so constant that Plaintiff was forced to block
19 the above referenced numbers in order to avoid future calls.

20
21 21. Most recently, Defendant called Plaintiff on May 5, 2015.

22 22. Upon information and belief, Defendant conducts its business in a
23 manner that violates the TCPA.
24
25

**DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT**

COUNT I

23. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

24. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automated message and/or prerecorded voice and/or automatic telephone dialing system.

25. Defendant's calls to Plaintiff were not made for emergency purposes.

26. Defendant's calls to Plaintiff in and after December 2014 were not made with Plaintiff's prior express consent.

27. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

28. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

29. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, EDDIE TYLKA, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, EDDIE TYLKA, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: September 23, 2015

By: /s/ Craig Thor Kimmel
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